

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF SOUTH CENTRAL BELL)	
TELEPHONE COMPANY FOR CONFIDENTIAL)	
TREATMENT OF ITS FRANKFORT-EAST TO)	CASE NO. 91-227
FRANKFORT-MAIN INTEROFFICE FACILITY)	
PROJECT REVIEW PACKAGE)	

O R D E R

This matter arising upon petition of South Central Bell Telephone Company ("South Central Bell") filed June 18, 1991 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the total cost of its equipment for the capital improvements for the Frankfort-East to Frankfort-Main Interoffice Facility Project Review Package and its forecast information on the grounds that disclosure of the information is likely to cause South Central Bell competitive injury, and it appearing to this Commission as follows:

South Central Bell seeks to protect as confidential the total estimated cost of the equipment for the capital improvements to be used in its Frankfort-East to Frankfort-Main Interoffice Facility Project Review Package. South Central Bell also seeks to protect the forecast information contained in the project review package.

In support of its petition to protect as confidential the total cost of the project, South Central Bell states that it purchases its equipment through competitive bids from vendors. If a vendor were made aware of the total cost of the project, it

could adjust its bid accordingly. This could result in South Central Bell paying higher prices for the equipment than it would have paid if the information was not publicly available.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage. The petition satisfies neither criteria with respect to the total cost of the project.

The supposition that vendors will submit bids based upon South Central Bell's estimated costs is contrary to the logic upon which competitive bidding is based. Competitive bidding is used in the belief that it reduces costs by forcing competing bidders to offer to perform the work for the lowest possible price. Thus, it is immaterial to a bidder what South Central Bell estimates it will be required to pay. What is material to a bidder is what price its competitors will offer for the contract. Therefore, it cannot be assumed that knowledge of South Central Bell's estimated project costs will have any affect at all upon the bidding process.

But, even if it is assumed that disclosure of the total project costs will result in higher bids and ultimately injure the ratepayers, that is not an injury for which protection is

specifically provided by the Kentucky Open Records Act. The object of that Act, as declared in KRS 61.872(1), is that "all public records shall be open for inspection" (emphasis added) unless specifically exempted. The information sought to be protected does not fall within any exemption provided by the Act and, therefore, cannot be maintained as confidential. Protection of the information should thus be denied.

Concerning the forecast information, it shows when South Central Bell facilities have maximum capacity and where South Central Bell will be adding new capacity. Disclosure of this information would allow potential competitors of South Central Bell to determine where the high usage areas are located and which South Central Bell markets are vulnerable to competition. Potential competitors could use this information to target particular market areas. Thus, disclosure of this information is likely to cause South Central Bell competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the total cost of the Frankfort-East to Frankfort-Main Interoffice Facility Project Review Package be and is hereby denied.

2. The forecast information, which South Central Bell has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

3. South Central Bell shall, within 10 days of the date of this Order, file an edited copy of the project review package with the confidential material protected by this Order obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 28th day of August, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director